

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.20397 of 2014

Arising Out of PS.Case No. -127 Year- 2007 Thana -RAHIKA District- MADHUBANI

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Deonarain Yadav s/o Late Mukund Yadav Village Bhojparaul, P.S. Bisfi,
District Madhubani at present Resident of Mohalla Jagdeo Path Murlichak,
P.S. Hawai Adda, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Malik Yadav s/o Chattar Yadav village Kharauna, P.S. Rahika, District
Madhubani.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bijay Bhushan Prasad

For the Opposite Party/s : Mr. Renuka Ratnakar (App)

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR
UPADHYAY
ORAL ORDER

5 13-09-2017 Heard learned counsel for the petitioner and the State.

No one appears on behalf of the opposite party no.2 despite
personal service on him.

Vide order dated 21.6.2017, this court has indicated
the reason for granting indulgence and issuing notice to the
opposite party no.2.

From the tenor of the complaint, it appears that the
complainant has levelled allegation of assault at the instance of
this petitioner. There is Title Suit pending between the petitioner
and the complainant and during the pendency of the Title Suit No.
4 of 2007 as a pressure tactics, the present complaint has been
filed.



Earlier the learned Magistrate by exercising discretion under section 156(3) of the Cr.P.C. forwarded the complaint case to Rahika P.S. for institution of the case and investigation. The police after investigation submitted final form and after submission of final form, the learned Magistrate in a mechanical manner took cognizance without giving any reason for differing with the police report.

Learned counsel for the petitioner submits that petitioner is one of the known Advocates of this court. At the relevant time, he was Additional Advocate General and he has falsely been implicated in this case by the complainant as a pressure tactics.

Having regard to the fact that complaint case was lodged subsequent to the filing of the Title Suit and when the case was forwarded to the police after thorough investigation, the police has submitted final form and thereafter the leaned Magistrate took cognizance without considering the fact that there was title suit pending between the parties and the police has submitted final form after thorough investigation but the learned Magistrate has not recorded any reason for differing with the final form submitted by the police and taking cognizance against this petitioner.

Mr. Suraj Narayan Yadav, appearing on behalf of the



petitioner submits that the case of the petitioner falls within the exception carved out by the Apex Court in the **State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors.** reported in **AIR 1992 SC 604** as the same is tainted with mala-fide and designed to settle the vendetta. He also submits that as a counter blast of the pending title suit, the complaint case was filed and ignoring the background of the case, the learned Magistrate in a most mechanical manner took cognizance against the petitioner.

Counsel for the State is not in a position to dispute the legal proposition submitted by the counsel for the petitioner.

In the peculiar facts and circumstances of the case, the court is of the view that the order taking cognizance against this petitioner is covered by the judgment of the Apex Court in the case of **State of Haryana** (supra) as it is mala fide and also shows non-application of judicial mind while taking cognizance in the instant case differing with the final form submitted by the police.

Accordingly, the application is allowed and the order taking cognizance dated 22.5.2010 passed by the learned SDJM, Madhubani, in Madhubani (Rahika) P.S. Case No. 127/2007, Trial No. 2122 of 2012 so far as it relates to this petitioner is quashed.

(Anil Kumar Upadhyay, J)

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